

405 KAR 10:070. Kentucky reclamation guaranty fund.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 350.500 – 350.521

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.500 – 350.521

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to ensure bonds are adequate to perform reclamation in the event of forfeiture. This administrative regulation establishes information related to the operation of the Kentucky Reclamation Guaranty Fund, classification of permits, reporting and payment of fees, and penalties.

Section 1. Classification of Mine Permit Types. (1) The commission shall review and assign classification of mine types pursuant to KRS 350.509(1)(e) for the purposes of assessing the fees in accordance with KRS 350.518. Permits shall be assigned to one (1) of the following classifications:

(a) Surface coal mining operations containing activities defined in 405 KAR 8:001, Section 1(125), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;

(b) Underground coal mining operations containing activities defined in 405 KAR 8:001, Section 1(135), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;

(c) Combined surface and underground mining operations containing activities defined in both 405 KAR 8:001, Section 1(125) and 1(135), for which coal removal is ongoing on a regular or intermittent basis in accordance with an approved permit;

(d) Non-production permits include operations approved for mining support, maintenance and other facilities, or operations or activities pursuant to KRS 350.010(1), but do not include permitted coal removal operations, as established in paragraphs (a), (b), and (c) of this subsection; or

(e) Dormant permits, including expired permits, which shall include:

1. Permits for which all coal removal operations are complete, but an initial release of performance bond has not been granted, pursuant to 405 KAR 10:040, Section 2;

2. Permits in temporary cessation, pursuant to 405 KAR 16:010, Section 7, and 405 KAR 18:010, Section 5;

3. Permits for which a deferment has been granted, pursuant to 405 KAR 16:020, Section 5(1); and

4. Permits in paragraphs (a), (b), and (c) of this subsection that report no production in a quarter.

(2) Upon initial disturbance of an issued permit or resumption of coal production operations following a period of temporary cessation or deferment, pursuant to 405 KAR 16:020, Section 5(1), the permittee shall notify the ORGF within ten (10) days of the initial disturbance or resumption on Kentucky Reclamation Guaranty Fund Notification of Permit Activity, Form RGF - 3. The suspension provisions of Section 4(2) of this administrative regulation shall apply for failure to provide notification to the ORGF.

(3) The commission shall assign classifications, pursuant to KRS 350.509(1)(e), utilizing the following information:

(a) Member production records submitted pursuant to Section 2 of this administrative regulation;

(b) Issued permits;

- (c) Cabinet inspection records;
 - (d) Permit, license, and other records on file with the Kentucky Office of Mine Safety and Licensing, and the U.S. Mine Safety and Health Administration; and
 - (e) Any other permittee documents and records as deemed necessary by the Commission, pursuant to KRS 350.509(7).
- (4) A permit subject to KRS 350.518(2)(e) and (f) shall be exempt from the requirements of 405 KAR 10:090.

Section 2. Member Production Records, Fee Reporting, and Payments. (1) Each permittee in the Kentucky Reclamation Guaranty Fund shall:

(a) Report coal production from each permitted surface coal mining operation on a quarterly basis for coal mined and sold, beginning January 1, 2014;

(b) Maintain records on a quarterly basis that report the tonnage of coal mined and sold for each permit.

1. Coal producing permits shall be assigned a classification by the commission in accordance with Section 1 of this administrative regulation.

2. Tonnage shall be reported based on the weight of coal at the time of sale.

3. Coal mined and sold from permits that combine surface and underground operations shall report both underground and surface production separately;

(c) Retain records of coal mined and sold for a period of six (6) years from the end of the quarter in which a report was due; and

(d) Provide records necessary to substantiate the accuracy of reports and payments upon the request of the ORGF.

(2) Reporting of tonnage and payment of fees shall be recorded on the Kentucky Reclamation Guaranty Fund Quarterly Fee Report, RGF-1, for each permit for which coal was mined and sold during the previous quarter or has coal reserves available to be mined. The reporting of tonnage shall be accompanied by the fee required in 405 KAR 10:090.

(a) The reporting and payment period shall be quarterly with the first quarterly reporting period being January 1 through March 31. The report shall be submitted, and fees shall be received, no later than the 30th day of the month following the end of a reporting period.

1. A permittee shall submit all reports and payments for permits issued with the same permittee name on one (1) form.

2. The report shall be submitted even if the member has no coal mined and sold during the reporting period.

3. Reports are not required to be submitted for permits that have expired and a permit renewal is not being pursued, or for permits that have achieved at least a phase I bond release for the entire permit area.

(b) Payments received by the fund after the 30th day of the month following the reporting quarter, non-payment of fees, or underpayment of fees shall be subject to the penalty provisions of Section 4(1) of this administrative regulation.

Section 3. Non-production and Dormancy Fees and Payments. (1) Beginning January 1, 2014 permittees in the KRGF are required to pay non-production and dormancy fees to the KRGF for surface coal mining permits not subject to the tonnage fees in 405 KAR 10:090.

(a) Non-production and dormancy fees shall not apply to permits or increments that have been granted phase I bond release, have not been initially disturbed by the permittee after permit issuance, or contain underground acreage only.

1. Payment of the non-production and dormancy fees shall be in four (4) quarterly installments.

2. For non-production permits issued and not initially disturbed, the non-production annual fee shall be assessed for the calendar quarter after initial disturbance and be pro-rated for the remaining quarters of the calendar year.

(b) Permits that are used exclusively for coal preparation and processing operations, loading activities, disposal of refuse operations, coal haulage and access roads, mine maintenance and other support facilities, and other permits not subject to the tonnage fees in 405 KAR 10:090, Section 1, as determined by the commission shall pay the non-production fee of ten (10) dollars per acre.

(c) Any permits, or expired permits, not subject to the ten (10) dollar non-production fee in paragraph (b) of this subsection, and the tonnage fees in 405 KAR 10:090, Section 1, shall pay a dormancy fee of six (6) dollars per acre.

(d) The commission shall evaluate a permit that may meet multiple classifications and assign the permit a classification for assessment of fees.

(e) Members who provided written notice to the ORGF that they will opt-out of the fund and subsequently post full cost performance bonds prior to April 30, 2014 on all permits held by the member, shall not be subject to the fees listed in paragraphs (b) and (c) of this subsection.

(2) Non-production and dormancy fees shall be assessed to each eligible permit based on the total bonded acreage, or fraction thereof, on record with the DNR as of January 1 of each calendar year. Permits that have coal production and pay tonnage fees in accordance with Section 2 of this administrative regulation in each calendar quarter shall not be subject to the payment of dormancy fees assessed pursuant to this section. A permittee that receives an assessment notification for dormancy fees in accordance with subsection (1)(c) of this section, and does not report coal mined and sold in a calendar quarter, shall pay the dormancy fee for that quarter.

(a) Payment of the non-production and dormancy fees shall be made in four (4) separate equal quarterly installments beginning with the January 1 through March 31, 2014 quarter. Members shall be allowed to prepay the entire annual dormancy and non-production fees in a lump sum prior to April 30 of each calendar year. Fees received from prepayments shall not be refundable to the member.

(b) The ORGF shall notify each member on or before January 31 of each calendar year those permits that are classified and subject to dormancy or non-production fees. The notification shall include the permit classification, total bonded acreage subject to assessment for each permit, and the quarterly payment amount due by permit.

(c) A permittee shall be allowed thirty (30) calendar days after receipt of the initial assessment each year to provide written notice to the ORGF to contest the assessed dormancy or non-production fees.

1. The written notice shall include an explanation of the nature of the contest, the documentation relied upon by the permittee, and the specific permit and increments where the alleged error exists.

2. The ORGF shall review the information provided by the permittee and provide a response in writing of its decision to retain or modify the assessment.

3. The permittee shall not be subject to penalties for late payment if a decision is not issued by the ORGF prior to the payment due date.

(d) Quarterly installment payments shall be received in the ORGF no later than the 30th day of the month following the previous calendar quarter on the Kentucky Reclamation Guaranty Fund Quarterly Fee Report, RGF-1.

(e) Late payment or non-payment of fees shall subject members to penalties in Section 4(1) of this administrative regulation.

(f) All payments shall be in the form of a check, cashier's check, certified check, money or-

der, or electronic funds transfer, and be made payable to the Kentucky State Treasurer.

Section 4. Penalties. (1) Late Payment or Non-Payment of Fees and Initial Assessments.

(a) Permittees shall be subject to penalties of five (5) percent of the original fee for each month or fraction thereof elapsing between the due date and the date on which the payment is submitted for the failure to submit the following records and fees:

1. Quarterly production records within thirty (30) days of the end of the reporting quarter;
2. Payment of required tonnage fees within thirty (30) days of the end of the reporting quarter;
3. Non-production fees within thirty (30) days of the end of the reporting quarter;
4. Dormancy fees within thirty (30) days of the end of the reporting quarter; or
5. Initial capitalization assessments within thirty (30) days of the date of receipt of notice.

(b) Upon a determination by the ORGF that a permittee has underreported production or underpaid the amount due in any reporting quarter, the permittee shall submit the corrected information or payment within ten (10) days of notification that the report or payment is deficient or insufficient.

(c) A penalty of five (5) percent of the fee shall be assessed for the underpayment of tonnage fees if the payment is not received within ten (10) days of notification.

(d) Penalties for late payment, underpayment, or non-payment of fees or initial assessments shall be at a minimum of \$100.

(e) Payments of fees, penalties, or initial assessments that are more than thirty (30) days in arrears shall render the permittee subject to permit suspension pursuant to 405 KAR 12:020.

(2) Defrauding the commission. Any permittee submitting fraudulent production reports, misidentifying the method of coal production to obtain a lower fee payment, withholding documentation requested by the commission, or otherwise attempting to defraud the fund or commission shall be subject to permit suspension by the cabinet upon receipt of notification by the commission.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Reclamation Guaranty Fund Quarterly Fee Report", RGF-1, November 2016; and

(b) "Kentucky Reclamation Guaranty Fund Notification of Permit Activity", Form RGF -3, June 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 300 Sower Boulevard, Frankfort, KY 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (40 Ky.R. 479; 1065; eff. 11-7-2013; TAm eff. 7-6-2016; TAm eff. 11-1-2016.)